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DEPARTMENT OF NATURAL RESOURCES

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June 16, 2015

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Salt Lake City, Utah 84101-1531

Subject: Return of Permit Change, Task ID #4902, Hidden Splendor Resources, Inc.
Horizon Mine, C/007/0020

Dear Ms. Dragoo:

I am responding to Hidden Splendor Resources, LLC's (HSR) most recent submission of its application for approval of a significant revision to its mining plan; specifically its application requesting a change in the post mining land use from undeveloped to recreational use. In accordance with R645-303-221, the Division has completed an initial review of the permit revision application submitted by your office on behalf of HSR dated May 29, 2015. The Division has again determined that the application is not complete and cannot be reviewed.

The Division concludes that HSR has not submitted an application with sufficient information or justification to support a change in the post mining land use as required by R645-301-413 .300. This conclusion is based on the following analysis.

The Division finds that there have been no changes in the conditions at the mine or lands surrounding the mine that require or justify a change in the approved mining and reclamation plan. The surrounding lands remain undeveloped and consistent with the current reclamation plan to return to the preexisting use for undeveloped land. The plan was found to satisfy the requirements of the Act to restore the land in a timely manner to those uses which the land previously supported (R645-301-413). HSR states that if the postmining land use is changed to recreational use, the mine pad area would be kept to use as a parking lot and camping/staging area for hiking, hunting, ATV/horseback riding. Because the change would require keeping the pad, HSR says that it is also necessary to keep the diversion structures and the sediment pond for "sediment control".

In order to obtain approval of a change in postmining land use the Operator has the burden to demonstrate that the application meets the requirements of R645-301-413.300 which include demonstrating:



- (a) the alternative postmining land use is a higher and better use, and
- (b) there is a reasonable likelihood of achievement of the use (R645-301-413.310).
- (c) the use does not
 - present any actual or probable hazard to public health and safety, or
 - threat of water diminution or pollution (R645-301-413.320),
- (d) the use will not:
 - be impractical or unreasonable (R645-301-413.331),
 - be inconsistent with applicable land use policies or plans (R645-301-413.332),
 - involve unreasonable delay in implementation ((R645-303-413.333), or
 - cause or contribute to a violation of local or federal law ((R645-303-413.334).

HSR appears to be financially incapable of performing the reclamation work as required by the existing reclamation plan. HSR has filed a Chapter 13 Bankruptcy and has disposed of all of its mining and other assets. HSR has, subsequent to the filing for Bankruptcy, been assessed very substantial fines by MSHA that preclude its operation in mining without satisfying those claims. It is assumed that the lands held by HSR including the disturbed lands are subject to the claims of creditors and cannot be disposed of or sold by HSR without the agreement of the creditors or the bankruptcy court. HSR's application has not included any information to counter the foregoing evidence that it is incapable of performing the work.

The surety provided by HSR consists of a condominium unit in Salt Lake City that was owned by Cecil Ann Walker, who is deceased, and who was the mother of Alexander H. Walker III. Alexander H Walker III, and his siblings are the current owners of HSR. Mr. Walker is the current manager of the company. Mr. Walker and his siblings, as heirs of their mother's estate, are also the effective owners of the condominium. Forfeiture of the condominium will directly affect the financial interests of Mr. Walker and his family. The proposal for a change in the post mining land use has been presented by Mr. Walker on behalf of HSR, but it has been clear that this proposal was also being presented on behalf of the family as owners of the surety.

It is apparent that one of the objectives of the proposed changes in postmining land use is to reduce the costs of reclamation to avoid the financial impact associated with the foreclosure of the condominium. Mr. Walker's family has not proposed selling the condominium and using the funds to complete reclamation, although this is their right. Although the desire to avoid personal financial loss has been acknowledged, it cannot be a basis for approving a change in the postmining land use. The purpose of the surety was that it be used to complete reclamation as required by the approved plan. The requirements to change the postmining land use must be met. If anything, the obvious self-interest of the proponents of the change, requires a higher degree of scrutiny to assure that the proposal is not impractical or unreasonable and meets all the requirements in the rules.

Mr. Walker and HSR's proposed change is dependent on a third party contract to buy the land for the alternative use. However, HSR has not provided evidence that it has a binding contract with a third party that would assure that the proposed alternative post mining land use would in fact be pursued and reclamation work completed. The application includes representations that there is an agreement with a company to buy the land, but this claim of an agreement was based solely on a letter of intention together with a blank 'form contract'. HSR was asked to provide evidence of an enforceable agreement including assurances of financing and release of claims from the bankruptcy and creditors. The Division was advised by the parties to the letter of intent, that they no longer are interested in acquiring the property. Even if the letter of intention had not been withdrawn, HSR had not provided sufficient evidence of a proposed sale for the Division to conclude that there was a reasonable likelihood for the achievement of the alternative post mining land use. In addition to the lack of a buyer, HSR has not submitted evidence that it has made any effort to obtain the consent of the bankruptcy court or creditors, or that the creditors and bankruptcy court would allow a sale of the land for a price that would support the proposed alternative land use.

The requirement for a reasonable likelihood of achievement of the alternative use is tied to the main reasons for the Act; i.e., to protect the public health and safety and avoid environmental harm. Without a viable land-owner, there would be little assurance that the site would be maintained and remain in compliance with other Federal and State rules. For example, the sediment pond will need to comply with the Clean Water Act. If there's not a serious owner, the sediment pond will continue to degrade and produce off-site impacts to receiving streams. Additionally, all the culverts at the site have a limited useful life. At some point, they will corrode and need to be replaced. If there is not a viable operator and no bond, there will be no one to take care of that work. Thus, an approval of a change in the postmining land use must meet the original purposes of the Act which are to "minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public." Utah Code § 40-10-2.

Based on the foregoing, the Division finds that HSR's application fails to provide evidence as requested previously and as required by the rules that it is financially able to assure a reasonable likelihood for the achievement of the proposed postmining land use. (R645-301-413.310).

In addition, HSR's actions are contrary to the requirement that a change in postmining land use not involve unreasonably delay. HSR has also avoided restoring the disturbed area to the use prior to mining in a timely manner as required by its permit. Despite numerous inspections, demands, conferences, and consultations that have taken place for more than two years, HSR has demonstrated either an inability to timely reclaim the disturbed areas or a willful intention to delay or avoid doing reclamation. HSR has repeatedly requested additional time to sell the land rather than do the work. To date the reclamation work completed has been minimal: removal of existing buildings [sold for scrap] and temporary closures of portals. The application

for approval of an alternative land use has always been contingent on there being a buyer for the lands. The application has repeatedly been submitted in an inadequate form. The year-long process of asking for additional time and submitting these inadequate applications has precluded timely reclamation of the lands. Most recently, HSR presented the change in postmining land use as a reason for not abating the Failure To Abate Cessation Order (FTACO) requiring removing excess material from the sedimentation pond.

The delay in reclamation has contributed to further problems at the site. Vandalism has occurred on at least two occasions with the mine stoppings being broken through allowing unauthorized access to the mine. Maintenance is difficult with no one on the site to monitor the conditions.

Further delay is also not appropriate and approval is not possible due to the failure of HSR and its owners and controllers to address outstanding violations. Subsequent to the bankruptcy the Division issued to HSR notices of violation that have resulted in fines that have not been paid, and a cessation order that has not been abated, resulting in a failure to abate cessation order and associated fines. The Division is obligated to review the application under the same rules as a significant revision. It is precluded by R645-300-132.100 and Utah Code § 40-10-11(3)(b) from approving a permit change when there are outstanding violations of a FTACO that has not been abated and fines paid. Thus, there is also no basis for reviewing the application while the owners and operators continue to not address these violations.

Additional questions have not been addressed by the application on this submittal, such as the effect of leaving the sediment ponds, parking pads, asphalt roads, drainage control structures (culverts), on the public health and safety or the potential of these features to pose a threat of water diminution or pollution. The Division finds that the application for a change in the postmining land use fails to satisfy the requirements of the Act. There is no evidence provided to demonstrate that there is reasonable likelihood of achievement of the proposed use. Further review of the application will continue to delay reclamation and is contrary to the requirements of the Act. The owners of the condominium property provided as surety and other responsible parties have been provided notice that they have the option to commence reclamation according to the existing reclamation plan. If they fail to take any action to do so within the time provided for by the notice, the Division will proceed with forfeiture of the surety.

As the site is currently unattended and there are outstanding performance issues and enforcement actions, time is of the essence. Please call me at (801) 538-5320 if you have any questions.

Sincerely,



Dana Dean
Associate Director

DD/sqs
Enclosure
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